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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,466	02/10/2004	Meghan M. Barni	44442.00001	1348
50086	7590	03/26/2010	EXAMINER	
LAW OFFICE OF DAVID H. JUDSON			JARRETT, SCOTT L.	
15950 DALLAS PARKWAY			ART UNIT	PAPER NUMBER
SUITE 225				3624
DALLAS, TX 75248				
NOTIFICATION DATE		DELIVERY MODE		
03/26/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mail@davidjudson.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/775,466	<b>Applicant(s)</b> BARNI, MEGHAN M.
	<b>Examiner</b> SCOTT L. JARRETT	<b>Art Unit</b> 3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 23 December 2009.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s)       is/are withdrawn from consideration.

5) Claim(s)       is/are allowed.

6) Claim(s) 1-11 is/are rejected.

7) Claim(s)       is/are objected to.

8) Claim(s)       are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on       is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No.      .
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)

Paper No(s)/Mail Date      

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date      

5) Notice of Informal Patent Application

6) Other:

#### **DETAILED ACTION**

1. This **Final** Office Action is in response to Applicant's petition granted March 3, 2010 and amendments filed December 23, 2009. Applicant's amendments amended claims 1-4, and 9 and added new claims 10-11.

#### ***Response to Amendment***

2. The objection to claims 1-9 in the previous office action is withdrawn in response to Applicant's amendments to claims 1-9.

#### ***Response to Arguments***

Applicant's arguments filed December 23, 2009 have been fully considered but they are not persuasive. Specifically applicant's argue that the prior art of record fails to teach or suggest "assignment of actual employees to schedules" (Last Paragraph, Page 11) and/or selection of a given set of the entities for scheduling (Last Paragraph, Page 11).

In response to Applicant's arguments that the prior art of record, specifically Stannard and O'Brien, fail to teach or suggest "assign the given set of the entities to one or more candidate schedules that are associated with the given pattern set" the examiner respectfully disagrees.

Initially it is noted that applicant's claim does not actually assign employees to schedules, the claim merely recites that entities (employees) are assigned to one or more candidate schedules that are associated with a given pattern set.

Stannard teaches a system and method for flight schedule bidding over a computer network (personal computer/terminal connected to a processing terminal) comprising the assignment of the given set of the entities (all employees who bided on the schedules/bid lines, subscribers) to one or more candidate schedules (bid lines) that are associated with the given pattern set (flight schedules, bid lines, published flight data) – specifically Stannard teaches generating candidate schedules (i.e. the bid lines which match the employees preferences/criteria) associated with the given pattern set (the published bid lines, flight data, - candidate schedules for which employees bid and to which they will be ultimately assigned to by the airline based on their bids and business criteria).

- "The system and procedures issues, as its output, a customized prioritized list of bid line selections tailored specifically to the indicated desires of the employee." (Column 1, Lines 42-44)
- Column 2, Lines 15-24, recommended bids (candidate schedules), bid card
- Column 9, Lines 33-37
- Figures 4a, 4b

Additionally it is noted that Stannard teaches that it is old and well known to utilize employee bids to assign actual employees to a final/single schedule (flight

assignment; Column 1, Lines 6-31) wherein the purpose/goal of the flight bidding system/method of Stannard is to automate the bid submission as part of the overall assignment of actual employees to flight schedules (flight assignment; "In the bidding process, the various flight personnel, pilots, co-pilots, engineers, flight attendants, etc. submit bids for selected bid lines of their choice. The flight assignments are then made by the airline....", Column 1, Lines 20-23).

Further O'Brien teaches a web-based system and method for shift scheduling/assignment comprising assigning employees (set of entities) to one or more (candidate) schedules that are associated with a given schedule pattern set (shift, shift pattern/templates; Column 1, Lines 43-48; Column 4, Lines 54-59; Column 6, Lines 5-17; Figure 2, Elements 230, 250) wherein employees identify one or more bids with respect to one or more schedules (shifts) associated with a given schedule pattern set (Column 1, Lines 50-55; Column 7, 17-25, 53-68; Column 8, Lines 1-16; Claim 1, elements b, d, l; Figure 6).

In response to Applicant's argument that the prior art of record fails to teach or suggest selecting a given set of entities for scheduling with respect to the given schedule pattern set, at the close of a given time period the examiner respectfully disagrees.

Stannard teaches selecting a given set of entities for scheduling with respect to the given schedule pattern set, at the close of a given time period ("each and every

published bid line is subjected to such analysis", Column 2, Lines 9-15; Column 6, Lines 13-20; Column 8, Lines 24-29; Figures 4a, 4b).

O'Brien teaches selecting a given set of entities for scheduling with respect to the given schedule pattern set, at the close of a given time period (Column 4, Lines 51-58; Figures 2, 3).

It is noted that the applicant did not challenge the officially cited facts in the previous office actions therefore those statements as presented are herein after prior art. Specifically it has been established that it was old and well known in the art at the time of the invention to rank bids, using any number of ranking, sorting, or prioritization rules, approaches, or techniques, is old and very well known.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stannard, U.S. Patent No. 4,845,625 in view of O'Brien, U.S. Patent no. 6,587,831.

Regarding Claims 1 and 9 Stannard teaches a method and apparatus operative in a work environment wherein entities to be scheduled each access a computer network using a client computer (Column 11, Lines 24-40; Figures 1, 4a), comprising:

- during a period of time each of a set of entities (e.g. flight personnel, system) irrespective of their seniority or ranking (priority, status, etc.) in the work environment (Stannard provides for all employees to define their bid/schedule priorities and preferences *irrespective* of the employees seniority or priority. While Stanndard does teaches that schedules *maybe assigned* to employees based on seniority/priority (Column 1, Lines 23-25) as a means for providing a seniority bias for schedule assignments this is vastly different from enabling employees to identify schedules/bids based on seniority/priority which Stannard and O'Brien clearly do not teach or suggest; Column 1, Lines 37-55) to use the client computer to:

- identify a given schedule pattern set (Column 1, Lines 37-55); and

- identify one or more bids (offers, trades, etc.) with respect to one or more schedules associated with the given schedule pattern set (Column 1, Lines 7-25; 37-47; Column 10, Lines 30-5);
- at the close of the time period, selecting a given set of the entities for scheduling with respect to the given schedule pattern set (Column 1, Lines 1-25, Column 11, Lines 24-41); and
- assigning the given set of entities to one or more (candidate) schedules associated with the given pattern set (Column 1, Lines 1-25, Column 11, Lines 24-41).

Stannard further teaches that the method and apparatus comprises a processor and code executable by the processor to implement the method steps (Figure 1).

While Stannard teaches that the method and apparatus for schedule bidding occurs during various period of time/periodically Stannard does not expressly teach a *given* period of time as claimed.

O'Brien teach a given time period for scheduling bidding and assignment (open/close, bidding period; Column 8, Lines 1-5; Claims 1k; 2kl) in an analogous art of entity scheduling.

More generally O'Brien teaches method and apparatus for schedule bidding comprising during a given time period (open/close) a set of entities using a client computer to identify a given schedule pattern set and to identify one or more bids with respect to one or more schedules associated with the given schedule pattern set

(schedule templates, shift patterns; Column 2, Lines 6-15; Column 3, Lines 64-68; Column 7, Lines 53-68; Column 8, Lines 1-36; Figure 6) and assign a given set of entities to one or more schedules associated with the schedule pattern set (Column 1, Lines 44-56; Column 4, Lines 45-68; ).

O'Brien further teaches sorting/ranking bids (Column 8, Lines 17-37).

It would have been obvious to one skilled in the art at the time of the invention that the method and apparatus for scheduling entities as taught by Stannard would have benefited from utilizing a give time period for the schedule bidding process in view of the teachings of O'Brien, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Regarding Claim 2 Stanndard teach a method further comprising an entity identifying a set of sorting preferences ("preferences and priorities") associated with the given schedule pattern set (Column 1 Lines 37-59; Column 3, Lines 20-65; Column 6; Column 10, Lines 64-68).

Regarding Claim 3 Stannard teaches a method further comprising an entity identifying a new given schedule pattern set and an associated set of sorting

preferences during the given time period (Column 3, Lines 20-30; Column 5, Lines 63-68; Column 6).

Regarding Claim 4 Stannard teaches a method further comprising an entity selecting a different schedule pattern set and identifying a set of one or more bids associated with the different schedule pattern during the given time period (Column 1, Lines 38-47; Column 3, Lines 20-30, 54-59).

Regarding Claim 5 Stannard teaches a method and apparatus wherein entities (e.g. flight personnel) define a priorities (ranking method) and preferences for schedule bids ("preferences and priorities"; Column 1, Lines 40-59; Column 3, Lines 20-65; Column 5, Lines 63-68; Column 6, Lines 1-10) and an entity (the system/apparatus) ranks (sorts, matches, recommends) the schedule bids based on the entities (flight personnel's) ranking/prioritization preferences (Column 2, Lines 9-24; Column 6, Lines 13-20) – substantially the same as applicant's invention as disclosed in paragraphs 11 and 92.

Stannard further teaches that scheduling bidding, by employees, is old and very well known (Column 1, Lines 7-9).

While Stannard teaches that the method/apparatus ranks the schedule bids based on the flight personnel's priorities and preferences Stannard does not expressly

teach that the entity of claim 1 (i.e. the flight personnel of Stannard) rank one or more bids associated with the given schedule pattern set as claimed.

Official notice is taken that entities ranking bids, using any number of ranking, sorting, or prioritization rules, approaches, or techniques, is old and very well known. For example a homeowner selling their home may receiving multiple bids (offers) for there house wherein the homeowner may rank the bids based on any number of criteria including but not limited to move-in date, offer amount, down payment, or any other of a plurality of terms of the sale.

It would have been obvious to one skilled in the art at the time of the invention that the method and apparatus as taught by Stannard with its ability to enable entities (flight personnel, managers, etc.) to define their own bid ranking/prioritization preferences would have benefited from enabling entities to rank one or more bids associated with a schedule in view of the teachings of official notice, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Regarding Claim 6 Stannard teaches a method further comprising automatically ranking (sorting, prioritizing) the one or more bids associated with the given schedule pattern set (Column 1, Lines 39-47; Column 2, Lines 9-24; Figure 4a).

Regarding Claim 7 Stannard teaches a method and apparatus further comprising assigning a schedule to at least one entity that did not provide a bid for any (candidate) schedules associated with the given schedule pattern set (Column 1, Lines 55-59; Column 10, Lines 15-34, 63-68).

Regarding Claim 8 Stannard does not expressly teach that the method/apparatus further comprises deselecting a given set of entities for schedule with respect to the given schedule pattern set as claimed.

O'Brien teaches deselecting (selecting, flagging, marking, preselecting, etc.) a given set of entities for schedule with respect to the given schedule pattern set (Column 4, Lines 65-68; Column 5, Lines 1-7; Column 7, Lines 39-51; ) in an analogous art of entity scheduling.

It would have been obvious to one skilled in the art at the time of the invention that the method and apparatus as taught by Stannard would have benefited from deselecting a given set of entities for schedule with respect to the given schedule pattern set in view of the teachings of O'Brien, since the claimed invention is merely a

combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Regarding Claim 10 while it is old and very well known that supervisors (managers, employers, etc.) configure schedules/schedule patterns Stannard does not expressly teach a supervisor as claimed.

O'Brien teaches a supervisor entity configures the given schedule pattern set such that a first entity (employee) can view and bid on at least one schedule in the given schedule pattern set for which a second entity cannot view of end (e.g. employees can view/bid on schedules while non-employees (i.e. people without login/passwords) cannot bid on the schedules; Column 3, Lines 38-49; Column 4, Lines 25-28; Column 6, Lines 1-30, 44-47; Column 7, Lines 39-41; Column 9, Lines 10-17).

It would have been obvious to one skilled in the art at the time of the invention that the system and method as taught by Stannard would have benefited from enabling a supervisor to configure schedule pattern sets in view of the teaching of O'Brien et al., since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Regarding Claim 11 Stannard teaches a first entity having a given status (type, user class,) in the work environment that the second entity does not share (e.g. PamAm pilots and pilots that do not work for PanAm; Column 4, Lines 50-59).

O'Brien also teaches a first entity having a given status (type, user class, etc.; e.g. manager) in the work environment that the second entity does not share (e.g. employees are not managers or casual vs. permanent employees; Column 3, Lines 38-49; Column 4, Line 18).

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SCOTT L. JARRETT whose telephone number is (571)272-7033. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott L Jarrett/  
Primary Examiner, Art Unit 3624